HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT APPEAL NO. 818 OF 2006

BETWEEN

M/s Saraswathi 'B Mill' Limited,
Nindra Village, Chittoor District.

.....

Appellant

And

The Assistant Commissioner,
Employees Provident Fund Organization,
Cuddapah & another

.....Respondents

Counsel for the Appellant : Shri B. Vijaysen Reddy

Counsel for the Respondents :

Dated: 04.08.2006

::JUDGMENT::

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 24.04.2006 passed by the learned Single Judge in Writ Petition No. 8229 of 2006 whereby she declined to entertain the prayer made by the appellant for quashing notice-cum-order dated 21.02.2006 issued by Assistant Commissioner, Employees' Provident Fund Organisation (respondent No.1) for levy of damages under Section 14-B and recovery of interest under Section 7-Q of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short 'the 1952 Act') on the ground of availability of alternative remedy under Section 7-I of the Act, but still granted relief in the form of interim stay subject to the condition of payment of 50% of the amount.

Shri B. Vijayasen Reddy, leaned counsel for the appellant made strenuous efforts to persuade us to differ with the learned Single Judge, entertain the appeal and nullify the notice-cum-order issued by respondent No.1 for levy of damages and recovery of interest by arguing that the same is vitiated due to violation of the rules of natural justice. Shri Reddy also invoked the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short 'the 1985 Act') and submitted that during the pendency of the proceedings under that Act, respondent No.1 could not have initiated action for levy of damages and recovery of interest under the 1952 Act.

We have considered the submissions of the learned counsel, but have not at all felt impressed. A perusal of the record shows that the appellant has consistently defaulted in discharging its obligation under the 1952 Act. It did not deposit different

amounts due from December 1998 to November 2005. The consistent failure of the appellant to comply with the mandatory provisions of the 1952 Act left the competent authority with no choice but to initiate action under Section 7-Q for levy of interest and damages under Section 14-B. In our opinion, respondent No.1 should have initiated the action against the appellant immediately after expiry of the statutory period fixed for deposit of the dues. However, the fact of the matter is that respondent No.1 did not take action till
14-2-2006 when first notice was issued for levy of interest and damages. The appellant did not respond to the notice leaving the officer concerned with no option but to issue final notice-cum-demand on 21.02.2006.

The appellant could have challenged the impugned notice-cum-order by filing appeal under Section 7-I of the 1952 Act, but in stead of adopting that course, it chose to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India with the hope that somehow or the other it will be able to persuade the Court to stultify the action taken by the competent authority for recovery of the amount due to the workers along with damages. Unfortunately for the appellant and fortunately for the system, the learned Single Judge refused to be swayed by the plea of compassion put forward on behalf of the appellant and relegated it to the remedy of appeal.

In our opinion, even though Article 226 of the Constitution does not, in terms, contain any limitation on the exercise of the High Court's power to issue orders, directions or writs including

prerogative writs, one of the several rules of self-imposed restraint innovated by superior Court is that the High Court will not entertain a writ petition if an equally efficacious alternative remedy is available to the aggrieved person (See **A.V. Venkateshwaran v. R.S. Wadhwani**[1], **Thansingh Nathmal v. Superintendent of Taxes**[2], **Baburam v. Zilla Parishad**[3], **Champa Lal v. I.T. Commissioner**[4], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[5], **C.I.T. v. Ramendra Nath Ghosh**[6], **Swadeshi Cotton Mills Co. Ltd. v. Government of U.P.**[7], **Gujarat University v. N.U. Rajguru**[8], **State of H.P. v. Raja Mahendra Pal**[9], **L.L. Sudhakar Reddy v. State of A.P.**[10], **State of Bihar v. Jain Plastics & Chemicals Ltd.,**[11], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**[12], **ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd.,**[13] **Titaghur Paper Mills Co. Ltd. v. State of Orissa**[14] and **Assistant Collector, Central Excise v. Dunlop India Ltd.**[15]

The 1952 Act, which was enacted for creating a mechanism for deposit of provident funds (Pension fund) etcetera for the employees in the factories and other establishments is a complete code unto itself. This Act is a piece of welfare legislation meant to protect the interest of the working class. Therefore, remedy of appeal etcetera available in the 1952 Act deserves to be applied with greater rigour and the High Court has to resist the temptation of entertaining a petition filed under Article 226 of the Constitution questioning the action initiated by the authorities

constituted under the Act for recovery of dues of the workers and levy of interest or damages. In our considered view, the High Court will be fully justified in refusing to entertain writ petitions filed in such matters except when the vires of the statute is under challenge or the petitioner comes up with a substantive plea of patent violation of the rules of natural justice resulting in serious prejudice to his cause. In the present case, the appellant has neither pleaded nor any material has been placed before the Court to show that the action taken by respondent No.1 is vitiated due to violation of the rules of natural justice. The oral submission made by Shri B. Vijayasen Reddy on this score does not find support from the factual matrix of the case. The other submission of the leaned counsel that in view of the bar contained in Section 22(1) of the 1985 Act, respondent No.1 could not have initiated action under Section 7-Q and 14-B of the 1952 Act also deserves to be rejected because it is the appellant's own case that the action initiated under the 1985 Act has come to an end and the industrial unit has been revived.

For the reasons mentioned above, we hold that the appeal is merit less and is liable to be dismissed. Ordered accordingly.

At this stage, Shri B. Vijayasen Reddy, learned counsel for the appellant made a request for extension of time to enable his client to avail the remedy of appeal. This request of the learned counsel is accepted and two weeks' further time is allowed to the appellant to avail the remedy of appeal. This would be subject to the condition that if the appellant does not file appeal within two weeks from today, the concession given by the learned Single

Judge against the recovery of the amount due from the appellant shall automatically stand withdrawn.

A copy of this order be sent to Assistant Commissioner, Employees' Provident Fund Organization, Cuddapah with the direction that in case the appellant fails to prefer appeal within two weeks from the date of this order, then the officer concerned must take all positive steps for recovery of the amount due to the workers.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

Note:
Court Officer should give
attested copy of this order
to the learned counsel
for the appellant.

04.08.2006
ksld/svs

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[1] AIR 1961 SC 1506
[2] AIR 1964 SC 1419
[3] AIR 1969 SC 556
[4] AIR 1970 SC 645
[5] AIR 1970 SC 1980

[6] (1972) 4 SCC 379

[7] (1975) 4 SCC 378

[8] AIR 1988 SC 66

[9] (1999) 4 SCC 43

[10] (2001) 6 SCC 634

[11] (2002) 1 SCC 216

[12] (2003) 2 SCC 107

[13] (2004) 3 SCC 553

[14] (1983) 2 SCC 433

[15] (1985) 1 SCC 260